

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1537

AN ACT

To repeal sections 214.330, 362.011 and 473.097, RSMo, relating to administration of small estates, and to enact in lieu thereof three new sections relating to the same subject.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 214.330, 362.011 and 473.097, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 214.330, 362.011 and 473.097, to read as follows:

214.330. 1. The endowed care fund required by sections 214.270 to 214.410 shall be permanently set aside in trust or in accordance with the provisions of subsection 2 of this section. The trustee of the endowed care trust shall be a state- or federally chartered financial institution authorized to exercise trust powers in Missouri and located in this state. The income from the endowed care fund shall be distributed to the cemetery operator at least annually or in other convenient installments. The cemetery operator shall have the duty and responsibility to apply the income to provide care and maintenance only for that part of the cemetery in which burial space shall have been sold and with respect to which sales the endowed care fund shall have been established and not for any other purpose. The principal of such funds shall be kept intact and appropriately invested by the

trustee, or the independent investment advisor. An endowed care trust agreement may provide that when the principal in an endowed care trust exceeds two hundred fifty thousand dollars, investment decisions regarding the principal and undistributed income may be made by a federally registered or Missouri registered independent qualified investment advisor designated by the cemetery owner, relieving the trustee of all liability regarding investment decisions made by such qualified investment advisor. It shall be the duty of the trustee, or the investment advisor, in the investment of such funds to exercise the diligence and care men of ordinary prudence, intelligence and discretion would employ, but with a view to permanency of investment considering probable safety of capital investment, income produced and appreciation of capital investment. The trustee's duties shall be the maintenance of records and the accounting for and investment of moneys deposited by the operator to the endowed care fund. For the purposes of sections 214.270 to 214.410, the trustee or investment advisor shall not be deemed to be responsible for the care, the maintenance, or the operation of the cemetery, or for any other matter relating to the cemetery, including, but not limited to, compliance with environmental laws and regulations. With respect to cemetery property maintained by cemetery care funds, the cemetery operator shall be responsible for the performance of the care and maintenance of the cemetery property owned by the cemetery operator and for the opening and closing of all graves, crypts, or niches for human remains in any cemetery property owned by the cemetery operator.

2. If the endowed care cemetery fund is not permanently set

aside in a trust fund as required by subsection 1 of this section then the funds shall be permanently set aside in a segregated bank account which requires the signature of the cemetery owner and either the administrator of the office of endowed care cemeteries, or the signature of a licensed practicing attorney with escrow powers in this state as joint signatories for any distribution from the trust fund. No funds shall be expended without the signature of either the administrator of the office of endowed care cemeteries, or a licensed practicing attorney with escrow powers in this state. The account shall be insured by the Federal Deposit Insurance Corporation or comparable deposit insurance and held in the state- or federally chartered financial institution authorized to do business in Missouri and located in this state. The income from the endowed care fund shall be distributed to the cemetery operator at least in annual or semiannual installments. The cemetery operator shall have the duty and responsibility to apply the income to provide care and maintenance only for that part of the cemetery in which burial space shall have been sold and with respect to which sales the endowed care fund shall have been established and not for any other purpose. The principal of such funds shall be kept intact and appropriately invested by the cemetery operator with written approval of either the administrator of the office endowed care cemeteries or a licensed practicing attorney with escrow powers in this state. It shall be the duty of the cemetery owner in the investment of such funds to exercise the diligence and care a person of reasonable prudence, intelligence and discretion would employ, but with a view to permanency of investment considering

probable safety of capital investment, income produced and appreciation of capital investment. The cemetery owner's duties shall be the maintenance of records and the accounting for an investment of moneys deposited by the operator to the endowed care fund. For purposes of sections 214.270 to 214.410, the administrator of the office of endowed care cemeteries or the licensed practicing attorney with escrow powers in this state shall not be deemed to be responsible for the care, maintenance, or operation of the cemetery. With respect to cemetery property maintained by cemetery care funds, the cemetery operator shall be responsible for the performance of the care and maintenance of the cemetery property owned by the cemetery operator and for the opening and closing of all graves, crypts, or niches for human remains in any cemetery property owned by the cemetery operator.

3. The cemetery operator shall be accountable to the owners of burial space in the cemetery for compliance with sections 214.270 to 214.410.

4. All endowed care funds shall be administered in accordance with an endowed care fund agreement. The endowed care fund agreement shall be subject to review and approval by the office of endowed care cemeteries or by a licensed practicing attorney with escrow powers in this state. The endowed care cemetery shall be notified in writing by the office of endowed care cemeteries or by a licensed practicing attorney with escrow powers in this state regarding the approval or disapproval of the endowed care fund agreement and regarding any changes required to be made for compliance with this chapter and the rules and regulations promulgated thereunder. A copy of the proposed

endowed care fund agreement shall be submitted to the office of endowed care cemeteries. The office of endowed care cemeteries or a licensed practicing attorney with escrow powers in this state shall notify the endowed care cemetery in writing of approval and of any required change. Any amendment or change to the endowed care fund agreement shall be submitted to the office of endowed care cemeteries or to a licensed practicing attorney with escrow powers in this state for review and approval. Said amendment or change shall not be effective until approved by the office of endowed care cemeteries or by a licensed practicing attorney with escrow powers in this state. All endowed care cemeteries shall be under a continuing duty to file with the office of endowed care cemeteries or with a licensed practicing attorney with escrow powers in this state and to submit for approval any and all changes, amendment, or revisions of the endowed care fund agreement.

362.011. 1. For the purposes of this chapter, a person does not engage in the trust business by:

(1) The rendering of fiduciary services by an attorney-at-law admitted to the practice of law in this state;

(2) Rendering services as a certified or registered public accountant in the performance of duties as such;

(3) Acting as a trustee or receiver in bankruptcy;

(4) Engaging in the business of an escrow agent;

(5) Receiving rents and proceeds of sale as a licensed real estate broker on behalf of the principal;

(6) Acting as trustee under a deed of trust made only as security for the payment of money or for the performance of

another act;

(7) Acting in accordance with its authorized powers as a religious, charitable, educational, or other not-for-profit corporation or as a charitable trust or as an unincorporated religious organization;

(8) Engaging in securities transactions as a dealer or salesman;

(9) Acting as either a receiver under the supervision of a court or as an assignee for the benefit of creditors under the supervision of a court; or

(10) Engaging in such other activities that the director may prescribe by rule.

2. Persons consigned to be not engaged in the trust business pursuant to subsection 1 of this section shall not use the words "trust company" as part of any artificial or corporate name or title nor shall such persons engage in any other conduct that violates section 362.245.

473.097. 1. Distributees of an estate which consists of personal property or real property or both personal and real property have a defeasible right to the personal property, and are entitled to the real property of such estate, as provided in this section, without awaiting the granting of letters testamentary or of administration, if all of the following conditions are met:

(1) The value of the entire estate, less liens, debt, and encumbrances, does not exceed forty thousand dollars;

(2) Thirty days have elapsed since the death of the decedent and no application for letters or for administration or

for refusal of letters under section 473.090 is pending or has been granted, or if such refusal has been granted and subsequently revoked;

(3) A bond, in an amount not less than the value of the personal property, approved by the judge or clerk of the probate division is filed by the person making the [herein] required affidavit conditioned upon the payment of the debts of the decedent, including any debts to the state of Missouri, the expenses of funeral and burial and compliance with future orders of the court in relation to the estate of the decedent; and further conditioned that any part of the property to which the distributee is not entitled will be delivered to the persons entitled to the property under the law. Liability of the sureties on the bonds provided for in this section terminates unless proceedings against them are instituted within two years after the bond is filed; except that, the court may dispense with the filing of a bond if it finds that the same is not necessary;

(4) A fee, in the amount prescribed in [subdivision (4) of] subsection 1 of section 483.580, RSMo, and when required, the publication cost of the notice to creditors are paid or the proof of payment for such publication is provided to the clerk of the probate [court] division.

2. Notwithstanding the limitation periods set out in section 473.050, the affidavit required by this section may be made by the person designated as personal representative under the will of the decedent, if a will has been presented for probate within the limitation periods specified in section 473.050, otherwise by any distributee entitled to receive

property of the decedent any time after thirty days after decedent's death, and shall set forth all of the following:

(1) That the decedent left no will or, if the decedent left a will, that the will was presented for probate within the limitation periods specified in section 473.050;

(2) That all unpaid debts, claims or demands against the decedent or the decedent's estate and all estate taxes due, if any, on the property transfers involved have been or will be paid, except that any liability by the affiant for the payment of unpaid claims or demands shall be limited to the value of the property received;

(3) An itemized description and valuation of property of the decedent. As used in this subdivision, the phrase "property of the decedent" shall not include property which was held by the decedent as a tenant by the entirety or a joint tenant at the time of the decedent's death;

(4) The names and addresses of persons having possession of the property;

(5) The names, addresses and relationship to the decedent of the persons entitled to and who will receive, the specific items of property remaining after payment of claims and debts of the decedent, included in the affidavit;

(6) The facts establishing the right to such specific items of property as prescribed by this section.

The certificate of the clerk shall be annexed to or endorsed on the affidavit and shall show the names and addresses of the persons entitled to the described property under the facts stated



in the affidavit and shall recite that the will of decedent has been probated or that no will has been presented to the court and that all estate taxes on the property, if any are due, have been paid.

3. A copy of the affidavit and certificate shall be filed in the office of the clerk of the probate division and copies of the affidavit and certificate shall be furnished by the clerk.

4. The distributees mentioned in this section may establish their right to succeed to the real estate of the decedent by filing a copy of the foregoing affidavit and certificate of the clerk in the office of the recorder of deeds of each county where the real property is situated.

5. When the value of the property listed in the affidavit is more than fifteen thousand dollars, the clerk shall cause to be published in a newspaper of general circulation within the county which qualifies under chapter 493, RSMo, a notice to creditors of the decedent to file their claims in the court or be forever barred. The notice shall be published once a week for two consecutive weeks. Proof of publication of notice pursuant to this section shall be filed not later than ten days after completion of the publication. The notice shall be in substantially the following form:

To all persons interested in the estate of  
....., Decedent:

On the ..... day of ....., [19....]  
20..., a small estate affidavit was filed by the distributees for the decedent under section 473.097, RSMo, with the probate division of the circuit court of ..... County,

Missouri.

All creditors of the decedent, who died on  
....., [19...] 20..., are notified that  
section 473.444 sets a limitation period that would bar claims  
one year after the death of the decedent. A creditor may request  
that this estate be opened for administration.

Receipt of this notice should not be construed by the  
recipient to indicate that the recipient may possibly have a  
beneficial interest in the estate. The nature and extent of any  
person's interest, if any, may possibly be determined from the  
affidavit on this estate filed in the probate division of the  
circuit court of ..... County, Missouri.

Date of first publication is ....., [19....] 20...

.....  
Clerk of the Probate Division  
of the Circuit Court  
..... County, Missouri

6. Upon compliance with the procedure required by this  
section, the personal property and real estate involved shall not  
thereafter be taken in execution for any debts or claims against  
the decedent, but such compliance has the same effect in  
establishing the right of distributees to succeed to the property  
as if complete administration was had; but nothing in this  
section affects the right of secured creditors with respect to  
such property.

7. The affiant shall collect the property of decedent  
described in the affidavit. The property of decedent shall be  
liquidated by the affiant to the extent necessary to pay debts of

decedent. If the decedent's property is not sufficient to pay such debts, abatement of the shares of the distributees shall occur in accordance with section 473.620. The affiant shall distribute the remaining property to such persons identified in the affidavit as required in subdivision (5) of subsection 2 of this section who are entitled to receive the specific items of personal property, as described in the affidavit, or to have any evidence of such property transferred to such persons. To the extent necessary to facilitate distribution, the affiant may liquidate all or part of decedent's property.